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IN THE

Supreme Court of the United States

IN THE MATTER OF AUGUST J. WOERNER, REMONSTRATOR AND ON BEHALF OF ALL OTHER REMONSTRATORS, AGAINST THE ANNEXATION OF THE TOWN OF WOODRUFF PLACE, INDIANA,
Appellants.

v.

CITY OF INDIANAPOLIS,
Appellee.

CAUSE
No. 662

BRIEF IN OPPOSITION TO APPEAL FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO APPEAL FOR WRIT OF CERTIORARI

The Appellee, as to the contention of the Appellants that the action of the Supreme Court of Indiana and of the trial Court (the Superior Court of Marion County, Indiana) was in violation of the 14th and 5th Amendments of the Constitution of the United States, in that the description used in annexation proceedings did not embrace any part of Woodruff Place and that the Court in so determining that it did, transgressed the right of the Appellants, thereby judicially curing but in so doing violating legislatively

due process of law, answers that such contention is not borne out by the facts of the case.

The description of the ordinance (Brief p. 27). The Courts decision in the trial Court (Brief p. 25), and Judgment of the Supreme Court of Indiana (Brief p. 21), refers to the territory as "all that * * * * * within the Incorporated Town of Woodruff Place". There was no variance anywhere.

The Appellee states that there is no compelling reason why this cause should ever be reviewed by the Supreme Court of the United States.

The Indiana Statute, Burns' R.S. vol. 9, pt. 1, Sec. 4-8703, involving such annexation is as follows:

> No such annexation shall be made, under the foregoing section of a part of the territory of any other incorporated town or city, but only of the whole corporate territory thereof. In case of such annexation, the two corporations shall be deemed to be consolidated, and the consolidated corporation shall be bound for all the debts and liabilities, and shall be the owner of all corporate property, franchises and rights of every nature, of both of such municipal corporations: Provided, however, that no city or town having a population of one thousand seven hundred (1,700) or more as shown by the last preceding United States census shall be annexed under any of the provisions of Sections 242 (s 48-701), and 243 (s 48-702) of this Act. The consolidation of two or more cities or of two or more towns or of a city and town or of cities and towns each having a population of one thousand seven hundred (1,700) or more, as shown by the last preceding United States census shall only take place in accordance with the provisions of section 241 (s 48-601) of this Act. (Acts 1905, ch. 129, s 244, p. 219; 1913, ch. 21, s 1, p. 30; 1945, ch. 209, s 1, p. 969.)

That there appears in the record of this Cause, a certification by the United States Department of the Census that the population of Woodruff Place at the time of its annexation was (about) one thousand five hundred (1,500) persons.

The matter brought before the Court is most minor. Appellee's contention is that the entire record discloses only a typographical error in a City Ordinance which misled no one and which the Appellant waived below. (Opinion Ind. Supreme Court Brief p. 22.)

Out of this set of facts there arises no Federal question of substance not heretofore determined by the Supreme Court of the United States. The Indiana decision in the Supreme Court of that State was decided entirely conformable to numerous applicable decisions of the Supreme Court of the United States.

The question involved is one of statutory interpretation. In statutory construction where one word has erroneously been used for another in a Statute, the proper word will be deemed substituted or supplied and Courts will not permit statutory construction which will result in absurd consequences, and this rule of law is supported by the overwhelming precedents of the Supreme Court of the United States.

Haggar Co. v. Helvering, Tex., 60 S. Ct. 337, 308 U. S. 389, 84 L. Ed. 340, mandate conformed to, C. C. A., Haggar Co. v. C. I. R., 111 F. (2d) 144, (3);

U. S. v. Ryan, Mont., 52 S. Ct. 65, 284 U. S. 167, 76 L. Ed. 224 reversed, U. S. v. Anderson, 52 S. Ct. 125, 284 U. S. 584, 76 L. Ed. 505, (7).

The precedents cited by the Supreme Court in Indiana in regard to statutory or Ordinance construction, in its decision reported at 177 N. E. (2d) 34, are entirely conformable to the precedents of the Supreme Court of the United States.

State ex rel. v. Bartholomew (1911), 176 Ind. 182, 191, 95 N. E. 417;
Clare v. State (1897), 68 Ind. 17, 25;
Gustavel v. State (1899), 153 Ind. 613, 54 N. E. 123;
Kos v. State ex rel. Metzler (1941), 218 Ind. 115, 121, 31 N. E. (2d) 50;
Town of Homecroft et al. v. MacBeth (1958), 238 Ind. 57, 65, 148 N. E. (2d) 563.

Annexation or regrouping of inter governmental units within a State or the fact that those in regrouped or annexed territory will be subject to additional taxation or similar objections, has been held to constitute no violation of the Federal constitution by the Supreme Court of the United States and does not amount to any taking of property without due process.

Town of Mt. Pleasant v. Beckwith, 100 U. S. 514, 25 L. Ed. 699, affirming Beckwith v. City of Racine, Fed. Cas. No. 1,213, 7 Biss. 142;
Clark v. City of Kansas City, 20 S. Ct. 284, 176 U. S. 114, 44 L. Ed. 392.

WHEREFORE, for the foregoing reason the Appellee, City of Indianapolis, in opposition to the application for certiorari, opposes the same, contends that no Federal question of Substanee is involved and respectfully requests that

the Supreme Court of the United States deny the application for a review by way of certiorari.

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Feb. 7, 1962

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